



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

15 CRIMINAL WRIT PETITION NO.167 OF 2025

Dattu Yewan Sathe,
Age 40 yrs., Occ. Nil,
R/o Harsool Open Prison,
Dist. Aurangabad.

... Applicant

... **Versus** ...

- 1 The State of Maharashtra
Through it's Secretary,
Home Department,
Mantralaya, Mumbai.
- 2 The Superintendent,
Harsool District Open Prison,
Dist. Aurangabad.
- 3 The Deputy Inspector General
of Police (Prison),
Region Aurangabad.

... Respondents

...

Mrs. Sharda P. Chate, Advocate for applicant
Mr. V.K. Kotecha, APP for respondent Nos.1 to 3

...

CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.

DATE : 27th FEBRUARY, 2025

ORDER :

1 Present petition has been filed challenging the order dated 17.01.2025 passed by respondent No.3 to the extent of directing petitioner to furnish surety of relative to the extent of amount of Rs.2,000/-, when the petitioner's furlough leave for 28 days has been allowed.

2 Heard learned Advocate Mrs. Sharda P. Chate for petitioner and learned APP Mr. V.K. Kotecha for respondent Nos.1 to 3.

3 Learned Advocate for petitioner submits that petitioner is not having any relative who could stand as surety and, therefore, he is unable to fulfil the conditions. He is ready to give PR. Bond of Rs.2,000/- and also he is ready to abide by other terms. After the order was passed, application was again made by petitioner on 20.01.2025 stating that after he has been convicted, other relatives have severed the relations and, therefore, they are not ready to accept the suretyship. He also states that there is no property belonging to petitioner.

4 Learned Advocate appearing for petitioner relies on the decision in **Dipak Sudhakar Wakalekar vs. The State of Maharashtra and others** [2011 ALL M.R. (Cri.) 1933]. The Full Bench of this Court has held that the convict

who is confined in the open prison can be released on furlough by dispensing with requirement of execution of bond by relatives. She submits that since the petitioner is lodged in open prison, the authority ought not to have imposed such condition. Learned APP is producing the communication by Police Inspector, Police Station, Newasa, who appears to have gone and made inquiry with the parents of petitioner. Statement of petitioner's father has been recorded. Father of petitioner has stated that he is ready to stand as surety for son and then it is annexed with copy of ration card. Of course, she also states that there are no relatives to the family. We are not convinced with the said statement. It cannot be taken that there are no relatives at all. It appears from statement of father of petitioner that petitioner came to be convicted on 21.12.2013 by Additional Sessions Judge, Vaijapur, Dist. Chhatrapati Sambhajanagar. The petitioner has not come with a case that he was never released on parole or furlough leave. In the petition it is not stated since when he is in open prison. Learned APP relies on Rule No.24 of Maharashtra Prisons (Furlough and Parole) Rules, 2024 came into effect from 02.12.2024, which provides for submission of surety, personal bond and cash security. It provides that, "*The Sanctioning Authority may grant furlough or parole to the prisoner subject to his executing a Personal Bond and Cash Security in format to observe all or any of the conditions mentioned therein and also subject to such other conditions, if any, specified by the Sanctioning*

Authority. It is specifically provides that no prisoner shall be granted furlough or parole unless he can provide a suitable surety willing to receive him. The surety chosen must be willing to enter into a Surety Bond in format appended to the rules for such amount as may be fixed by the Sanctioning Authority.”

5 To this the learned Advocate for petitioner submits that it does not make provision in respect of prisoner, who is in open prison. The Full Bench while deciding **Dipak Waklekar** (supra) has taken note of earlier rules i.e. rule No.6 of the Rules of 1959, which contemplates that a relative would furnish a surety bond in Form A for such amount as may be fixed by sanctioning authority who is willing to receive the prisoner while on furlough, and in clear terms it was stated that, “In other words, the sanctioning authority has a discretion in the given facts and circumstances of the case to release the prisoner on furlough by dispensing with requirement of surety bond in format appended to the rules”. Now, when it comes to the discretion, it is required to be seen, as to whether in present case said discretion has been used judiciously or not. The amount for which the surety has been demanded is only Rs.2,000/- and for that purpose, in our opinion, property is not must with such surety. It is only the question of submitting the suretyship under bond or in format to the authority concerned. In our

opinion, even the surety need not remain present. Further, with the advanced technology he can certainly be asked to remain present through Video Conferencing. If at all such incidence is there, that can be arranged from the Police Station to the Jail authority. Now, with certain condition or under the circumstance that the conviction of petitioner is under Section 302 as well as 307 of the Indian Penal Code, if the authority is taking precaution and asking the petitioner only to submit the surety for Rs.2,000/- only, then we do not find that unnecessary interference is required.

6 Therefore, we **dismiss** the writ petition, however, we grant opportunity to petitioner to once again submit the suretyship of either of his father or mother in format with the Jail authority, together with the documents such as ration card or other such document which would then be sufficient to hold that they are solvent to the extent of Rs.2,000/-, then the authority may consider it positively without insisting the physical presence of the father or the mother at Aurangabad, but may get them produced through Video Conferencing from Police Station Newasa.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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